

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-252
Table of Allotments,)	RM-10862
FM Broadcast Stations.)	
(Parker, Arizona))	

NOTICE OF PROPOSED RULE MAKING

Adopted: July 8, 2004

Released: July 9, 2004

Comment Date: August 30, 2004

Reply Date: September 14, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a proposal filed by Farmworker Educational Radio Network, Inc. ("FERNI"), licensee of Station KRIT(FM), Channel 230C3, Parker, Arizona.¹ FERNI proposes the substitution of Channel 252B1 for Channel 230C3 at Parker, Arizona.² FERNI states that it will promptly file an application to modify its authorized facilities upon allocation of Channel 252B1 at Parker.

2. Channel 252B1 is an equivalent channel for existing Channel 230C3 at Parker.³ FERNI represents that the proposed substitution will allow for a more advantageous transmitter site, resulting in a more effective use of the frequency spectrum and greater service to people residing in and around Parker, Arizona. FERNI notes that seven channels are available for allocation in Parker, Arizona, as C3 channels, and three channels are available for allocation as B1 channels.

¹ In its petition, FERNI notes that it has entered into an agreement to change channels in order to permit the creation of a new allotment at Desert Center, California, as requested in a counterproposal in MB Docket No. 02-124. *See Amboy, Baker, and Desert Center, California; Kingman, Mohave Valley, Parker, and Seligman, Arizona; and Boulder City, Caliente, Henderson, and Pahrump, Nevada*, MB Docket No. 02-124, DA 04-2059 (released July 8, 2004). FERNI emphasizes, however, that its proposal is separate and apart from the Desert Center proposal, and that its request for the proposed channel change at Parker, Arizona, is not dependent upon the outcome of MB Docket No. 02-124. FERNI's proposal, which is consistent with the 02-124 counterproposal, stands on its own and does not need to be considered in MB Docket No. 02-124. Accordingly, we are issuing a *Notice of Proposed Rule Making* in this new proceeding to consider the substitution of Channel 252B1 for Channel 230C3 at Parker, Arizona.

² In a supplement to its petition, FERNI proposes slightly different referent coordinates than those initially specified. FERNI's stated reason for its supplement is to avoid a terrain obstruction that was present with respect to the originally-proposed coordinates.

³ The minimum and maximum effective radiated power (ERP) levels are the same for Class B1 and Class C3 channels, as are the requirements pertaining to antenna height for the height above average terrain (HAAT). *See* 47 C.F.R. § 73.211.

3. This proposal complies with the Commission's technical rules and warrants consideration in order to allow relocation of Station KRIT(FM) at a more advantageous transmitter site. Channel 252B1 can be substituted for Channel 230C3 at Parker, Arizona, with a site restriction of 12 kilometers (7.5 miles) north of Parker at the following reference coordinates: 34-14-45 North Latitude and 114-16-14 West Longitude.⁴ Because Channels 230C3 and 252B1 are equivalent class channels, we will not accept competing expressions of interest.⁵ Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Parker, Arizona:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Parker, Arizona	230C3	252B1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 30, 2004, and reply comments on or before September 14, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on the Petitioner, as follows:

George R. Borsari, Jr.
Anne Thomas Paxson
Borsari & Paxson
4000 Albemarle Street, N.W.
Suite 100
Washington, D.C. 20016

6. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held

⁴ The proposed allotment is located within 320 kilometers (199 miles) of the United States-Mexico border, so it will be necessary to obtain concurrence in the allotment from the Government of Mexico.

⁵ See *Stamping Ground and Nicholasville, Kentucky*, 11 FCC Rcd 13180, 13181 (MMB 1996) ("... the procedures outlined in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984) and Section 1.420(g) do not apply here since no change in the class of the channel is involved"). See also *Reynoldsville, Pennsylvania*, 11 FCC Rcd 12715, 12716 (MMB 1996); and *De Ridder, Louisiana*, 13 FCC Rcd 22812 (MMB 1998).

together with rubber bands or fasteners. All envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

8. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the Petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.